

**North Dakota Department of Environmental Quality Public Notice
Reissue of an NDPDES Permit**

Public Notice Date: 5/6/2022

Public Notice Number: ND-2022-004

Purpose of Public Notice

The Department intends to reissue the following North Dakota Pollutant Discharge Elimination System (NDPDES) Discharge Permit under the authority of Section 61-28-04 of the North Dakota Century Code.

Permit Information

Application Date: 3/14/2022

Application Number: ND0026077

Applicant Name: American Colloid Co Gascoyne

Mailing Address: PO Box 2010, Bell Fourche, SD 57717

Telephone Number: 605.892.7178

Proposed Permit Expiration Date: 6/30/2027

Facility Description

The reapplication is for a commercial leonardite surface mining operation located near Scranton, ND. Discharges consist of surface runoff and/or groundwater encountered during mining. Discharges are within a closed basin and to unnamed tributaries of Buffalo Creek, a Class III stream. Discharges covered by this permit are subject to the surface water management conditions and the designated locations described in surface mining permits approved following public review under NDCC Chapter 38-14.1. Current and proposed discharge structures are located within the boundaries of American Colloid Company's approved surface mining permit in Sections 2 and 12, Township 130 North, Range 99 West and Section 35, Township 131 North, Range 99 West.

Tentative Determinations

Proposed effluent limitations and other permit conditions have been made by the Department. They assure that State Water Quality Standards and applicable provisions of the FWPCA will be protected.

Information Requests and Public Comments

Copies of the application, draft permit, and related documents are available for review. For further information on making public comments/public comment tips please visit: <https://deq.nd.gov/PublicCommentTips.aspx>. Comments or requests should be directed to the ND Dept of Env Quality, Div of Water Quality, 4201 Normandy Street, Bismarck ND 58503-1324 or by calling 701.328.5210.

All comments received by June 04, 2022 will be considered prior to finalizing the permit. If there is significant interest, a public hearing will be scheduled. Otherwise, the Department will issue the final permit within sixty (60) days of this notice. If you require special facilities or assistance relating to a disability, call TDD at 1.800.366.6868.

DRAFT

Permit No: ND0026077
Effective Date: July 1, 2022
Expiration Date: June 30, 2027

AUTHORIZATION TO DISCHARGE UNDER THE
NORTH DAKOTA POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with Chapter 33.1-16-01 of the North Dakota Department of Environmental Quality rules as promulgated under Chapter 61-28 (North Dakota Water Pollution Control Act) of the North Dakota Century Code,

American Colloid Company
Scranton, North Dakota

is authorized to discharge from its Gascoyne Mine near Scranton, North Dakota
to unnamed tributaries of Buffalo Creek

provided all the conditions of this permit are met.

This permit and the authorization to discharge shall expire at midnight,
June 30, 2027.

Signed this _____ day of _____, _____.

Karl H. Rockeman, P.E.
Director
Division of Water Quality

BP 2019.05.29

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DEFINITIONS

DEFINITIONS Standard Permit BP 2019.05.29

1. **“Act”** means the Clean Water Act.
2. **“Average monthly discharge limitation”** means the highest allowable average of “daily discharges” over a calendar month, calculated as the sum of all “daily discharges” measured during a calendar month divided by the number of “daily discharges” measured during that month.
3. **“Average weekly discharge limitation”** means the highest allowable average of “daily discharges” over a calendar week, calculated as the sum of all “daily discharges” measured during a calendar week divided by the number of “daily discharges” measured during that week.
4. **“Best management practices”** (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage areas.
5. **“Bypass”** means the intentional diversion of waste streams from any portion of a treatment facility.
6. **“Composite”** sample means a combination of at least 4 discrete sample aliquots, collected over periodic intervals from the same location, during the operating hours of a facility not to exceed a 24-hour period. The sample aliquots must be collected and stored in accordance with procedures prescribed in the most recent edition of Standard Methods for the Examination of Water and Wastewater.
7. **“Daily discharge”** means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the “daily discharge” is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the “daily discharge” is calculated as the average measurement of the pollutant over the day.
8. **“Department”** means the North Dakota Department of Environmental Quality, Division of Water Quality.
9. **“DMR”** means discharge monitoring report.
10. **“EPA”** means the United States Environmental Protection Agency.
11. **“Geometric mean”** means the n^{th} root of a product of n factors, or the antilogarithm of the arithmetic mean of the logarithms of the individual sample values.
12. **“Grab”** for monitoring requirements, means a single “dip and take” sample collected at a representative point in the discharge stream.
13. **“Instantaneous”** for monitoring requirements, means a single reading, observation, or measurement. If more than one sample is taken during any calendar day, each result obtained shall be considered.
14. **“Maximum daily discharge limitation”** means the highest allowable “daily discharge.”
15. **“Salmonid”** means of, belonging to, or characteristic of the family Salmonidae, which includes the salmon, trout, and whitefish.

16. **"Sanitary Sewer Overflows (SSO)"** means untreated or partially treated sewage overflows from a sanitary sewer collection system.
17. **"Severe property damage"** means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
18. **"Total drain"** means the total volume of effluent discharged.
19. **"Upset"** means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

DEFINITIONS Permit Specific

1. **"Active Mining Area"** means the area on and beneath land, used or disturbed in activity related to extraction, removal, or recovery of coal from its natural deposits. The definition may include access roads, suitable plant growth material (SPGM), stockpiles, sedimentation ponds, and other related structures.
2. **"Daily maximum concentration"** means the greatest discharge concentration during any calendar day. If more than one sample is taken on a calendar day, the average of all such samples shall be the daily concentration for that day.
3. **"Monthly Average Concentration"** means the average discharge concentration during a 30-consecutive day period (for reporting purposes a calendar month). It shall be determined by the summation of all daily concentrations for 30 days (calendar month) divided by the total number of days on which the values were obtained. If more than one sample is taken on a calendar day, the average of all such samples shall be the daily concentration for that day.
4. **"NDPDES"** means North Dakota Pollutant Discharge Elimination System.
5. **"Reclamation Area"** means an area which has been isolated from active mining area drainage and on which the final reclamation contour has been reached and seeding is completed. The definition may include access roads, suitable plant growth material (SPGM), stockpiles, sedimentation ponds, and other related structures.

OUTFALL DESCRIPTION

Outfall 012. Active. Final.							
Latitude: 46.11003		Longitude: -103.01697		County: Bowman			
Township: 130N		Range: 99W		Section: 2		QQ: DAA	
Receiving Stream: Unnamed Tributary of Buffalo Creek				Classification: Class III			
Outfall Description: Settling Pond #12. Discharge of runoff from mining activity from Settling Pond #12. Discharges from the outfall enter an unnamed tributary of Buffalo Creek.							
Active Mining Area: 01/31/2006							
Reclamation Area: Pending							

Outfall 013. Active. Final.			
Latitude: 46.11193		Longitude: -103.03430	
County: Bowman			
Township: 130N		Range: 99W	
Section: 2		QQ: BCD	
Receiving Stream: Unnamed Tributary of Buffalo Creek		Classification: Class III	
Outfall Description: Settling Pond #13. Discharge of runoff from mining activity from Settling Pond #13. Discharges from the outfall enter an unnamed tributary of Buffalo Creek.			
Active Mining Area: 01/31/2006			
Reclamation Area: Pending			

Outfall 014. Active. Final.			
Latitude: 46.12502		Longitude: -103.02238	
Township: 131N		Range: 99W	
Receiving Stream: Closed basin or open mine pits		Classification: None	
Outfall Description: Tompkins North Pond. Discharge of runoff from mining activity via spillway/overflow. Discharges from the outfall enter a closed basin or open mine pits depending on mining status.			
Active Mining Area: 10/01/2018			
Reclamation Area: Pending			

Outfall 015. Active. Final.			
Latitude: 46.12131		Longitude: -103.01704	
County: Bowman			
Township: 131N		Range: 99W	
Section: 35		QQ: DDA	
Receiving Stream: Closed basin or open mine pits		Classification: None	
Outfall Description: Tompkins East Pond. Discharge of runoff from mining activity via overflow. Discharges from the outfall enter a closed basin or open mine pits depending on mining status.			
Active Mining Area: 10/01/2018			
Reclamation Area: Pending			

PERMIT SUBMITTALS SUMMARY

Coverage Point	Mining Status	Submittal	Monitoring Period	Submittal Frequency	First Submittal Date
012	Active Mining	Discharge Monitoring Report	Quarterly	Quarterly	October 31, 2022
	Reclamation	Discharge Monitoring Report	Quarterly	Quarterly	October 31, 2022
013	Active Mining	Discharge Monitoring Report	Quarterly	Quarterly	October 31, 2022
	Reclamation	Discharge Monitoring Report	Quarterly	Quarterly	October 31, 2022
014	Active Mining	Discharge Monitoring Report	Quarterly	Quarterly	October 31, 2022
	Reclamation	Discharge Monitoring Report	Quarterly	Quarterly	October 31, 2022
015	Active Mining	Discharge Monitoring Report	Quarterly	Quarterly	October 31, 2022
	Reclamation	Discharge Monitoring Report	Quarterly	Quarterly	October 31, 2022
Application Renewal	EPA Form 1 & 2F		None	1/permit cycle	December 31, 2026

SPECIAL CONDITIONS

Water from sedimentation ponds used for dust suppression shall be applied at a rate that does not produce runoff.

I. LIMITATIONS AND MONITORING REQUIREMENTS

A. Discharge Authorization

During the effective period of this permit, the permittee is authorized to discharge pollutants from the outfalls as specified to the following: **Unnamed Tributary of Buffalo Creek**

This permit authorizes the discharge of only those pollutants resulting from facility processes, waste streams, and operations that have been clearly identified in the permit application process.

B. Effluent Limitations and Monitoring

The permittee must limit and monitor all discharges as specified below:

Table 1: Effluent Limitations and Monitoring Requirements Active Mining Areas				
Parameter	Effluent Limitations		Monitoring Requirements	
	Average Monthly Limit	Daily Maximum Limit	Sample Frequency	Sample Type
Total Iron ^a	3.5 mg/L	7.0 mg/L	Monthly	Grab
Total Suspended Solids ^a	35.0 mg/L	70.0 mg/L	Weekly	Grab
Settleable Solids ^{a,b}	N/A	0.5 mL/L	Weekly	Grab
Oil & Grease – Visual ^c	N/A	N/A	Daily	Visual
Oil & Grease ^c	*	10 mg/L	Conditional/ Monthly	Grab
pH ^d	Between 6.0 and 9.0 s.u.		Monthly	Instantaneous
Flow Rate (MGD) ^e	Report Monthly Average	Report Maximum Daily Value	Daily	Calculated
Drain Total (MG)	Report Monthly Total		Monthly	Calculated
Total Days Discharging	Report Monthly Total		Monthly	Calculated
Nitrogen, Total, mg/L ^f	Monitor only	Monitor only	Monthly	Grab
Nitrogen, Total, lb/day ^f	Monitor only	Monitor only	Monthly	Calculated
Phosphorus, Total (as P), mg/L	Monitor only	Monitor only	Monthly	Grab
Phosphorus, Total (as P), lb/day	Monitor only	Monitor only	Monthly	Calculated
Notes:				
a. <u>Alternate Limitations:</u> The department may waive the limitations for Total Iron and Total Suspended Solids for overflows caused by single or series of precipitation or snowmelt events after reviewing all information submitted in response to the Noncompliance Notification conditions (Part III.F). During overflow discharges Total Suspended Solids sampling shall be				

Table 1: Effluent Limitations and Monitoring Requirements Active Mining Areas	
<p>done in conjunction with Settleable Solids sampling for comparison purposes. Monitoring for Settleable Solids is not required for routine discharges.</p> <p>The Settleable Solids limit may be waived if there is a precipitation event greater than 2.97 inches in 24 hours. The limit may also be waived for snowmelt events on a case-by-case basis for facilities designed and maintained to contain runoff from a 10-year, 24-hour precipitation event.</p> <p>To qualify for these limitations, the facility must be designed, constructed, operated, and maintained to treat the runoff from a 10-year, 24-hour precipitation event (2.97 inches). For sedimentation ponds, any required pond dewatering must have been accomplished within 10 days of the last precipitation event when practicable. Additional time is allowable when dewatering is delayed due to activities or conditions downstream of the facility such as agricultural activities, landowner accessibility, drainage channel stability or capacity. The permittee has the burden of proof that these conditions are met.</p> <p>Precipitation shall be measured by gauge and recorded daily by the permittee.</p>	
b.	The Settleable Solids test procedure shall conform with 40 CFR 434.64.
c.	In the event that a visible sheen or floating oil be observed in the effluent, a grab sample shall be analyzed for oil and grease to ensure compliance with the concentration limit. Any single analysis and/or measurement beyond this limitation shall be considered a violation of the conditions of this permit.
d.	The pH, an instantaneous limitation, shall be between 6.0 (s.u.) and 9.0 (s.u.).
e.	The daily flow rate shall be determined by instantaneous flow measurement or calculated from daily readings.
f.	Total nitrogen is a combination of nitrate, nitrite, and Total Kjeldahl Nitrogen (TKN).
*	This parameter is not limited. However, the department may impose limitations based on sample history and to protect the receiving waters.
Stipulations:	
A pre-discharge sample must be taken prior to the start of any discharge.	
The permittee shall not discharge any floating solids, visible foam in other than trace amounts, or oily wastes that produce sheen on the surface of the receiving water.	
Samples taken in compliance with the monitoring requirements specified in this permit shall be taken prior to leaving company property or entering the receiving stream.	

Table 2: Effluent Limitations and Monitoring Requirements Reclaimed Areas			
Parameter	Effluent Limitations	Monitoring Requirements	
	Daily Maximum Limit	Sample Frequency	Sample Type
Total Suspended Solids (TSS) ^a	70.0 mg/L	Quarterly	Grab
Settleable Solids ^b	0.5 mL/L	Quarterly	Grab
pH ^c	Between 6.0 and 9.0 s.u.	Monthly	Instantaneous
Flow Rate (MGD) ^d	Report Monthly Average and Maximum Daily Value	Daily	Calculated
Drain Total (MG)	Report Monthly Total	Monthly	Calculated
Total Days Discharging	Report Monthly Total	Monthly	Calculated
Nitrogen, Total, mg/L ^e	Monitor only	Monthly	Grab
Nitrogen, Total, lb/day ^e	Monitor only	Monthly	Calculated
Phosphorus, Total (as P), mg/L	Monitor only	Monthly	Grab
Phosphorus, Total (as P), lb/day	Monitor only	Monthly	Calculated
Notes:			
a. The Total Suspended Solids limitation shall apply only to controlled discharges made by a mechanical or gravity dewatering device. During an overflow, discharge sampling for Total Suspended Solids shall be done in conjunction with Settleable Solids for comparison purposes only. Monitoring for Settleable Solids is not required for routine discharges.			
b. The settleable solids requirements apply to overflows or increases in flow caused by a single or series of precipitation or snowmelt events. The limitation may be waived if the amount of precipitation is greater than 2.97 inches in 24 hours. The limitation may also be waived for snowmelt events on a case-by-case basis for facilities designed and maintained to contain runoff from a 10-year, 24-hour precipitation event. The permittee has the burden of proof that these conditions are met. Precipitation shall be measured by gauge and recorded daily by the permittee.			
c. The pH, an instantaneous limitation, shall be between 6.0 (s.u.) and 9.0 (s.u.).			
d. The daily flow rate may be determined by instantaneous flow measurement or calculated from daily readings.			
e. Total nitrogen is a combination of nitrate, nitrite, and Total Kjeldahl Nitrogen (TKN).			

II. MONITORING, RECORDING, AND REPORTING REQUIREMENTS BP 2021.09.09

A. Representative Sampling (Routine and Non-Routine Discharges)

All samples and measurements taken shall be representative of the monitored discharge.

In order to ensure that the effluent limits set forth in this permit are not violated at times other than when routine samples are taken, the permittee must collect additional samples at the appropriate outfall whenever any discharge occurs that may reasonably be expected to cause or contribute to a violation that is unlikely to be detected by a routine sample. The permittee must analyze the additional samples for those parameters limited under **Part I Effluent Limitations and Monitoring** requirements of this permit that are likely to be affected by the discharge.

The permittee must collect such additional samples as soon as the spill, discharge, or bypassed effluent reaches the outfall. The samples must be analyzed in accordance with **B. Test Procedures**. The permittee must report all additional monitoring in accordance with **D. Additional Monitoring**.

B. Test Procedures

The collection and transportation of all samples shall conform with EPA preservation techniques and holding times found in 40 CFR 136. All laboratory tests shall be performed by a North Dakota certified laboratory in conformance with test procedures pursuant to 40 CFR 136, unless other test procedures have been specified in this permit or approved by EPA as an alternate test procedure under 40 CFR 136.5. The method of determining the total amount of water discharged shall provide results within 10 percent of the actual amount. The Settleable Solids test procedure shall conform with 40 CFR 434.64.

C. Recording of Results

Records of monitoring information shall include:

1. the date, exact place and time of sampling or measurements;
2. the name(s) of the individual(s) who performed the sampling or measurements;
3. the name of the laboratory;
4. the date(s) and time(s) analyses were performed;
5. the name(s) of the individual(s) who performed the analyses;
6. the analytical techniques or methods used; and
7. the results of such analyses.

D. Additional Monitoring

If the discharge is monitored more frequently than this permit requires, all additional results, if in compliance with **B. Test Procedures**, shall be included in the summary on the Discharge Monitoring Report.

E. Reporting of Monitoring Results

1. Monitoring results shall be summarized and reported to the department using Discharge Monitoring Reports (DMRs). If no discharge occurs during a reporting period, "No Discharge" shall be reported. The permittee must submit DMRs electronically using the electronic information reporting system unless requirements in subsection 3 are met.

2. Prior to December 21, 2025, the permittee may elect to electronically submit the following compliance monitoring data and reports instead of mailing paper forms. Beginning December 21, 2025, the permittee must report the following using the electronic reporting system:
 - a. General permit reports [e.g., notices of intent (NOI); notices of termination (NOT); no exposure certifications (NOE)];
 - b. Municipal separate storm sewer system program reports;
 - c. Pretreatment program reports;
 - d. Sewer overflow/bypass event reports; and
 - e. Clean Water Act 316(b) annual reports
3. The permittee may seek a waiver from electronic reporting. To obtain a waiver, the permittee must complete and submit an Application for Temporary Electronic Reporting Waiver form (SFN 60992) to the department. The department will have 120 days to approve or deny the waiver request. Once the waiver is approved, the permittee may submit paper versions of monitoring data and reports to the department.
 - a. One of the following criteria must be met in order to obtain a waiver. The department reserves the right to deny any waiver request, even if they meet one of the criteria below.
 1. No internet access,
 2. No computer access,
 3. Annual DMRs (upon approval of the department),
 4. Employee turnover (3-month periods only), or
 5. Short duration permits (upon approval of the department)

All reports must be postmarked by the last day of the month following the end of each reporting period. All original documents and reports required herein shall be signed and submitted to the department at the following address:

ND Department of Environmental Quality
Division of Water Quality
4201 Normandy Street
Bismarck ND 58503-1324

F. Records Retention

All records and information (including calibration and maintenance) required by this permit shall be kept for at least three years or longer if requested by the department or EPA.

III. COMPLIANCE RESPONSIBILITIES

A. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

B. Proper Operation and Maintenance

The permittee shall at all times maintain in good working order and operate as efficiently as possible all treatment or control facilities or systems installed or used by the permittee to achieve compliance with the terms and conditions of this permit. If necessary to achieve compliance with the conditions of this permit, this shall include the operation and maintenance of backup or auxiliary systems.

C. Planned Changes

The department shall be given advance notice of any planned changes at the permitted facility or of an activity which may result in permit noncompliance. Any anticipated facility expansions, production increase, or process modifications which might result in new, different, or increased discharges of pollutants shall be reported to the department as soon as possible. Changes which may result in a facility being designated a "new source" as determined in 40 CFR 122.29(b) shall also be reported.

D. Duty to Provide Information

The permittee shall furnish to the department, within a reasonable time, any information which the department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the department, upon request, copies of records required to be kept by this permit. When a permittee becomes aware that it failed to submit any relevant facts or submitted incorrect information in a permit application or any report, it shall promptly submit such facts or information.

E. Signatory Requirements

All applications, reports, or information submitted to the department shall be signed and certified.

All permit applications shall be signed by a responsible corporate officer, a general partner, or a principal executive officer or ranking elected official.

All reports required by the permit and other information requested by the department shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

The authorization is made in writing by a person described above and submitted to the department;
and

The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility, such as the position of plant manager, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters.

If an authorization under E. Signatory Requirements is no longer accurate for any reason, a new authorization satisfying the above requirements must be submitted to the department prior to or together with any reports, information, or applications to be signed by an authorized representative.

Any person signing a document under this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

F. Twenty-four Hour Notice of Noncompliance Reporting

1. The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally as soon as possible, but no later than twenty-four (24) hours from the time the permittee first became aware of the circumstances. The following occurrences of noncompliance shall be included in the oral report to the department at 701.328.5210:
 - a. Any lagoon cell overflow or any unanticipated bypass which exceeds any effluent limitation in the permit under G. Bypass of Treatment Facilities;
 - b. Any upset which exceeds any effluent limitation in the permit under H. Upset Conditions; or
 - c. Violation of any daily maximum effluent or instantaneous discharge limitation for any of the pollutants listed in the permit.
2. A written submission shall also be provided within five days of the time that the permittee became aware of the circumstances. The written submission shall contain:
 - a. A description of the noncompliance and its cause;
 - b. The period of noncompliance, including exact dates and times;
 - c. The estimated time noncompliance is expected to continue if it has not been corrected; and
 - d. Steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

Reports shall be submitted to the address in Part II.E. Reporting of Monitoring Results. The department may waive the written report on a case by case basis if the oral report has been received within 24 hours by the department at 701.328.5210 as identified above.

All other instances of noncompliance shall be reported no later than at the time of the next Discharge Monitoring Report submittal. The report shall include the four items listed in this subsection.

G. Bypass of Treatment Facilities

1. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to any of the following provisions in this section.
2. Bypass exceeding limitations-notification requirements.
 - a. Anticipated Bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten (10) days before the date of bypass.
 - b. Unanticipated Bypass. The permittee shall submit notice of an unanticipated bypass as required under F. Twenty-four Hour Notice of Noncompliance Reporting.
3. Prohibition of Bypass. Bypass is prohibited, and the department may take enforcement action against a permittee for bypass, unless:
 - a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment

downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

- c. The permittee submitted notices as required under the 1. Anticipated Bypass subsection of this section.

The department may approve an anticipated bypass, after considering its adverse effects, if the department determines that it will meet the three (3) conditions listed above.

H. Upset Conditions

An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of the following paragraph are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

1. An upset occurred and the permittee can identify its cause(s);
2. The permitted facility was, at the time being, properly operated;
3. The permittee submitted notice of the upset as required under F. Twenty-four Hour Notice of Noncompliance Reporting and
4. The permittee complied with any remedial measures required under I. Duty to Mitigate.

In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

I. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment. The permittee, at the department's request, shall provide accelerated or additional monitoring as necessary to determine the nature and impact of any discharge.

J. Removed Materials

Collected screenings, grit, solids, sludges, or other pollutants removed in the course of treatment shall be buried or disposed of in such a manner to prevent any pollutant from entering any waters of the state or creating a health hazard. Sludge/digester supernatant and filter backwash shall not be directly blended with or enter either the final plant discharge and/or waters of the state. The permit issuing authority shall be contacted prior to the disposal of any sewage sludges. At that time, concentration limitations and/or self-monitoring requirements may be established.

K. Duty to Reapply

Any request to have this permit renewed should be made six months prior to its expiration date.

IV. GENERAL PROVISIONS

A. Inspection and Entry

The permittee shall allow department and EPA representatives, at reasonable times and upon the presentation of credentials if requested, to enter the permittee's premises to inspect the wastewater treatment facilities and monitoring equipment, to sample any discharges, and to have access to and copy any records required to be kept by this permit.

B. Availability of Reports

Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the department and EPA. As required by the Act, permit applications, permits, and effluent data shall not be considered confidential.

C. Transfers

This permit is not transferable except upon the filing of a Statement of Acceptance by the new party and subsequent department approval. The current permit holder should inform the new controller, operator, or owner of the existence of this permit and also notify the department of the possible change.

D. New Limitations or Prohibitions

The permittee shall comply with any effluent standards or prohibitions established under Section 306(a), Section 307(a), or Section 405 of the Act for any pollutant (toxic or conventional) present in the discharge or removed substances within the time identified in the regulations even if the permit has not yet been modified to incorporate the requirements.

E. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. This includes the establishment of limitations or prohibitions based on changes to Water Quality Standards, the development and approval of waste load allocation plans, the development or revision to water quality management plans, changes in sewage sludge practices, or the establishment of prohibitions or more stringent limitations for toxic or conventional pollutants and/or sewage sludges. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

F. Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

G. State Laws

Nothing in this permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation preserved under Section 510 of the Act.

H. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Act.

I. Property Rights

The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.

J. Severability

The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected thereby.

**FACT SHEET FOR NDPDES PERMIT
ND0026077**

**AMERICAN COLLOID COMPANY GASCOYNE MINE
SCRANTON, ND**

DATE OF THIS FACT SHEET – APRIL 2022

INTRODUCTION

The Federal Clean Water Act (CWA, 1972, and later amendments in 1977, 1981, and 1987, etc.) established water quality goals for the navigable (surface) waters of the United States. One mechanism for achieving the goals of the CWA is the National Pollutant Discharge Elimination System (NPDES), which the US Environmental Protection Agency (EPA) has oversight authority. In 1975, the State of North Dakota was delegated primacy of the NPDES program by EPA. The North Dakota Department of Environmental Quality (NDDEQ), hereafter referred to as "department", has been designated the state water pollution control agency for all purposes of the Federal Water Pollution Control Act, as amended [33 U.S.C. 1251, et seq.], and is hereby authorized to take all action necessary or appropriate to secure to this state the benefits of the act and similar federal acts. The department's authority and obligations for the wastewater discharge permit program is in the NDAC Article 33.1-16 (North Dakota Administrative Code) which was promulgated pursuant to NDCC Chapter 61-28 (North Dakota Century Code). The department uses North Dakota Pollutant Discharge Elimination System (NDPDES) as its permitting title.

The following rules or regulations apply to NDPDES permits:

Procedures the department follows for issuing NDPDES permits (NDAC Chapter 33.1-16-01), Standards of Quality for Waters of the State (NDAC Chapter 33.1-16-02.1).

These rules require any treatment facility operator to obtain an NDPDES permit before discharging wastewater to state waters. They also define the basis for limits on each discharge and for other requirements imposed by the permit.

According to NDAC Section 33.1-16-01-08, the department must prepare a draft permit and accompanying fact sheet and make it available for public review. The department must also publish an announcement (public notice) during a period of thirty days, informing the public where a draft permit may be obtained and where comments regarding the draft permit may be sent (NDAC Section 33.1-16-01-07). For more information regarding preparing and submitting comments about the fact sheet and permit, please see Appendix A – Public Involvement. Following the public comment period, the department may make changes to the draft NDPDES permit. The department will summarize the responses to comments and changes to the permit in Appendix D – Response to Comments.

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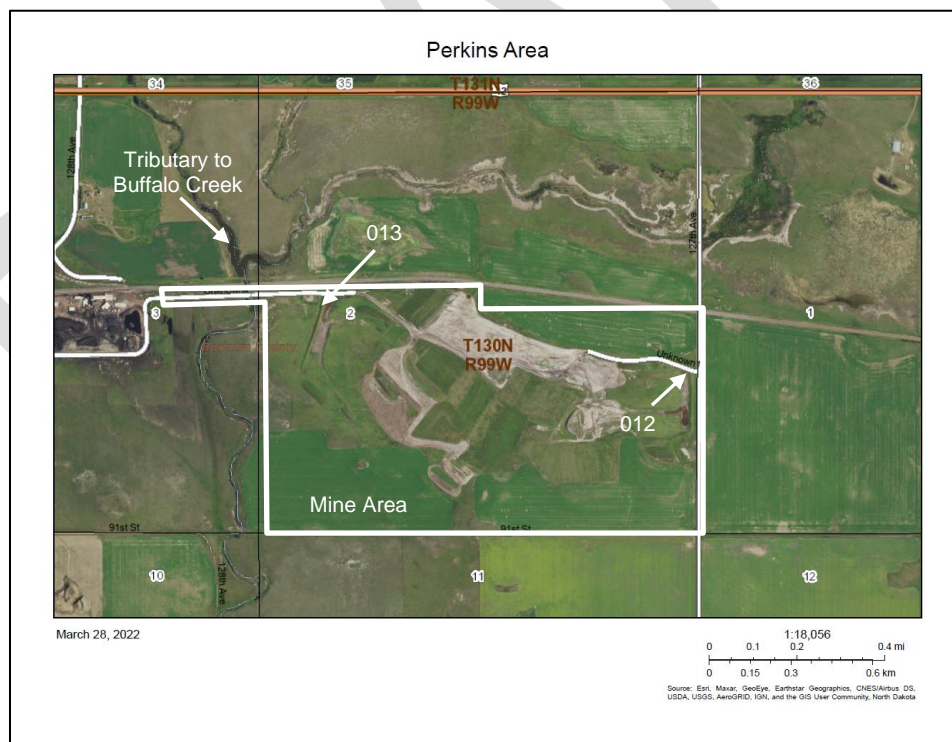
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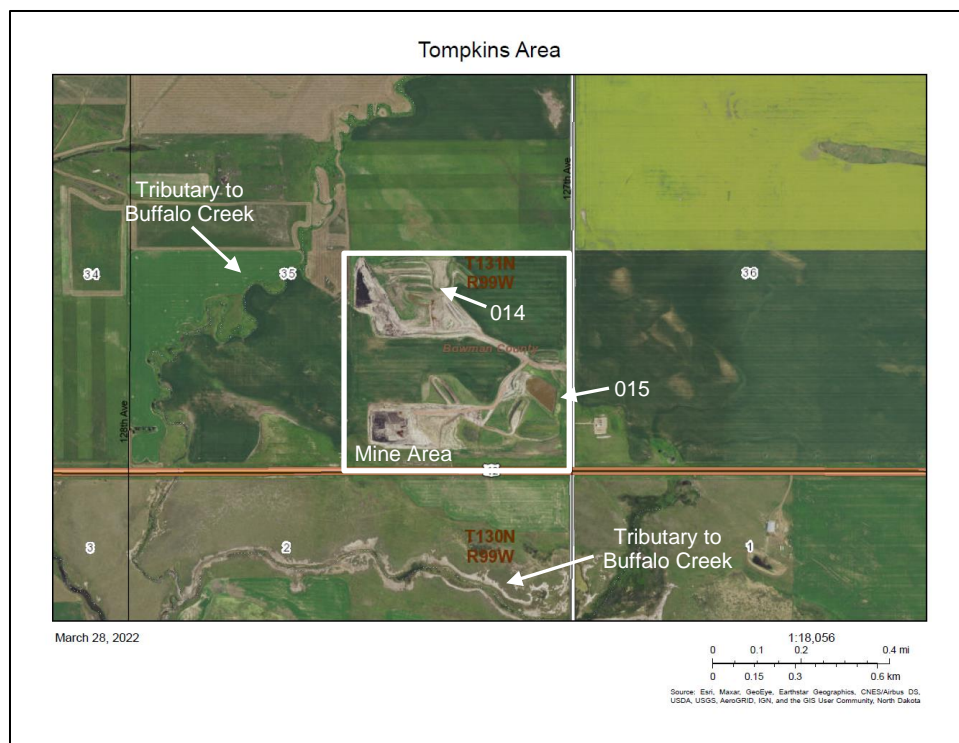
Table 1: General Facility Information

Applicant:	American Colloid Company
Facility Name and Address:	American Colloid Company Gascoyne Mine 9005 129th Ave SW Scranton, ND 58653
Permit Number:	ND0026077
Permit Type:	Minor Industrial, Permit Reissuance
Type of Treatment:	Sedimentation, Best Management Practices
SIC Code:	1499 (Miscellaneous Nonmetallic Minerals, Except Fuels)
NAICS Code:	212319 (Other Crushed and Broken Stone Mining and Quarrying)
Discharge Location:	Page Area: T130N, R99W, 12 Perkins Area: T130N, R99W, 2 Tompkins Area: T131N, R99W, 35
Hydrologic Code:	10130301 – North Fork Grand

Figure 1 – Aerial photograph of American Colloid Company, Scranton, ND (North Dakota Geographic Information System, map generated March 2022)

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FACILITY DESCRIPTION

American Colloid Company is a commercial leonardite mining operation located two miles east of Gascoyne, North Dakota. This is a shallow open pit mining operation that extracts near surface leonardite. Leonardite is typically associated with lignite coal deposits and can be used for agriculture, soil conditioning, polluted soil remediation, and as a drilling additive. Small pits are mined in progressive sequence. Reclamation occurs concurrently with mining as pits are mined out and new pits are opened. The mining process consists of:

- Stripping and stockpiling, or live spreading, soils
- Removing and stockpiling overburden or directly hauling overburden to mined out open pits
- Removal of leonardite
- Backfilling the open pit with overburden
- Spreading soil and seeding to re-vegetate

All discharges are located within the boundaries of approved surface mining permit ACPG-9701 issued by the North Dakota Public Service Commission (PSC), the state's Surface Mining Control and Reclamation Act (SMCRA) authority. These permits are required in the state under NDCC Chapter 38-14.1. The approved mining areas are known as the Page, Perkins, and Tompkins Areas. The Page Area is in the NE1/4 Section 12, Township 130 North, Range 99 West. The Perkins Area is in the S1/2 Section 2, Township 130 North, Range 99 West. The Tompkins Area is in the SE1/4 Section 35, Township 131 North, Range 99 West. Active mining takes place within the Perkins and Tompkins Areas.

No active mining is taking place in the Page Area; however, parts of the Page Area were previously mined and reclaimed. Future mining activity is permitted to occur within the Page Area. Stormwater runoff from the Page Area drains to an unnamed tributary of Buffalo Creek. The unnamed tributary is a Class III stream.

Stormwater is directed to sedimentation ponds in the Perkins and Tompkins Areas. Typically, water is pumped from the sedimentation ponds to trucks and used to spray gravel roads for dust suppression. Discharges from the ponds in the Perkins Area drain to unnamed tributaries of Buffalo Creek. The unnamed tributaries are Class III streams. Discharges from the ponds in the Tompkins Area drain to closed basins or open mine pits.

Surface mining permit applications show where commercial leonardite mining operations are expected to occur over the life of the mining permit, and the size, sequence, and timing of mining operations. The applications also show the location of proposed water ponds, impoundments, and diversions used for surface water management. All surface drainage from disturbed areas must pass through a sedimentation pond or other sediment control measure. These structures must be constructed prior to the start of mining operations. Once a pond or measure is constructed the discharge point is added to the list of discharge points. These structures must be maintained until removal is approved by the PSC. Removal must follow Policy Memorandum No. 19 to Mine Operators, July 12, 2006 (Revised), issued by the PSC.

Typically, sedimentation ponds are used, and required under NDAC Section 69-05.2-16-04, to control runoff from areas directly involved in the recovery of commercial leonardite and to

provide treatment prior to discharge off site. Surface drainage from disturbed areas must pass through a sedimentation pond or other sediment control measure as required in NDAC Section 69-05.2-16-04. Discharges from this commercial leonardite mining operation, like others in the state, must meet federal standards established for the coal-mining point source category (Title 40 of the Code of Federal Regulations, Part 434 or 40 CFR Part 434). The requirements specified in the proposed permit are based on the provisions outlined in the federal requirements applicable to alkaline mine drainage and western alkaline coal mining. The requirements consist of separate limitations and monitoring requirements for two phases of mining activity: (1) active mining areas, and (2) reclamation areas. Alternate limitations and monitoring requirements for discharges attributable to certain precipitation events are provided.

Runoff from the processing facility is covered by the NDPDES stormwater discharge general permit associated with mining, extraction, and paving material preparation, NDR32-0000. The general permit coverage number assigned to the processing facility is NDR320032. The general permit requires facilities to develop a stormwater pollution prevention plan (SWPPP) to minimize pollutants that could be discharged in runoff from areas outside of mining areas as well as routine sampling of stormwater runoff.

Outfall Description

Discharges are from structures or other control features used to manage the quality of the effluent and the hydrologic conditions from mining areas. The discharge location, structure description, and hydrologic considerations are identified in the surface mining permit(s) issued by the PSC, following interagency review and public comment, in accordance with NDCC Chapter 38-14.1. The permittee must request and obtain an NDPDES discharge point number from the department before a structure within a surface mining permit can be used to discharge waters subject to effluent standards.

The source of runoff to each discharge point depends on the status of the area draining to the point. These areas may be an "Active Mining Area" or "Reclamation Area" (refer to definitions). The types of wastes, fluids and pollutants that could be generated include runoff from suitable plant growth material piles, overburden piles, haul roads, exposed leonardite seams, and underlying strata. The quantity generated varies based on the amount of precipitation received. However, sedimentation ponds generally must provide treatment for a ten-year, twenty-four-hour precipitation event (NDAC Section 69-05.2-16-09(3)).

Outfall 012. Active. Final.							
Latitude: 46.11003		Longitude: -103.01697		County: Bowman			
Township: 130N		Range: 99W		Section: 2		QQ: DAA	
Receiving Stream: Unnamed Tributary of Buffalo Creek				Classification: Class III			
Outfall Description: Settling Pond #12. Discharge of runoff from mining activity from Settling Pond #12. Discharges from the outfall enter an unnamed tributary of Buffalo Creek.							
Active Mining Area.							
Reclamation Area: Pending							

Outfall 013. Active. Final.			
Latitude: 46.11193		Longitude: -103.03430	
County: Bowman			
Township: 130N		Range: 99W	
Section: 2		QQ: BCD	
Receiving Stream: Unnamed Tributary of Buffalo Creek		Classification: Class III	
Outfall Description: Settling Pond #13. Discharge of runoff from mining activity from Settling Pond #13. Discharges from the outfall enter an unnamed tributary of Buffalo Creek.			
Active Mining Area.			
Reclamation Area: Pending			

Outfall 014. Active. Final.			
Latitude: 46.12502		Longitude: -103.02238	
County: Bowman			
Township: 131N		Range: 99W	
Section: 35		QQ: DBA	
Receiving Stream: Closed basin or open mine pits		Classification: None	
Outfall Description: Tompkins North Pond. Discharge of runoff from mining activity via spillway/overflow. Discharges from the outfall enter a closed basin or open mine pits depending on mining status. Active Mining Area. Reclamation Area: Pending			

Outfall 015. Active. Final.			
Latitude: 46.12131		Longitude: -103.01704	
County: Bowman			
Township: 131N		Range: 99W	
Section: 35		QQ: DDA	
Receiving Stream: Closed basin or open mine pits		Classification: None	
Outfall Description: Tompkins East Pond. Discharge of runoff from mining activity via overflow. Discharges from the outfall enter a closed basin or open mine pits depending on mining status.			
Active Mining Area.			
Reclamation Area: Pending			

Outfall 001 – Inactive. Former silt fence/bale dike #01 located in SW1/4 NE1/4, Section 12, Township 130 North, Range 99 West. Discharges were to Buffalo Creek via unnamed natural drainage. The area was reclaimed in 2007 and inactivated in 2016.

Outfall 007 – Inactive. Former silt fence/bale dike #07 located in NE1/4 NE1/4, Section 12, Township 130 North, Range 99 West. Discharges were to Buffalo Creek via unnamed natural drainage. The area was reclaimed in 2007 and inactivated in 2016.

Outfall 009 – Inactive. Former settling pond #09 located in NE1/4 NE1/4, Section 12, Township 130 North, Range 99 West. Discharges were to Buffalo Creek via unnamed natural drainage. The area was reclaimed in 2007 and inactivated in 2016.

Outfall 010 – Inactive. Former silt fence/bale dike #10 located in NW1/4 NE1/4, Section 12, Township 130 North, Range 99 West. Discharges were to Buffalo Creek via unnamed natural drainage. The area was reclaimed in 2007 and inactivated in 2016.

Outfall 011 – Inactive. Former silt fence/bale dike #11 located in NW1/4 NE1/4, Section 12, Township 130 North, Range 99 West. Discharges were to Buffalo Creek via unnamed natural drainage. The area was reclaimed in 2007 and inactivated in 2016.

PERMIT STATUS

The department issued the current permit for this facility on July 1, 2017. The permit was later modified in October 2018 to add the Tompkins Mine area to the permit. The permit will expire June 30, 2022. The current permit includes monitoring requirements for total iron (TFe), total suspended solids (TSS), settleable solids (SS), oil and grease, total flow, and pH.

SUMMARY OF COMPLIANCE WITH PREVIOUS PERMIT ISSUED

Department staff conducted one routine, non-sampling compliance inspection since the effective date of the current permit (July 1, 2017). No deficiencies or violations were noted during the inspection. The department's assessment of compliance is based on review of the facility's Discharge Monitoring Reports (DMRs) and inspections conducted by department staff.

Past Discharge Data

No discharge has occurred from the facility since 2013.

PROPOSED EFFLUENT LIMITATIONS

Discharges from mining operations are regulated by national effluent guidelines which establish technology-based effluent limitations. The technology based effluent limitations may be found in 40 CFR 434 and are shown in Tables 3 and 4 of this fact sheet.

The current permit contains language about the use of the nearest National Weather Service recording station to measure precipitation amounts to qualify for overflow waivers. Since the nearest recording stations are located in Bowman, North Dakota (20 miles to the west) and Hettinger, North Dakota (19 miles to the east), the department determined the recording stations are not representative of the facility and removed the language from the proposed permit.

The department removed language from the current permit requiring the permittee to contact the department for a pre-discharge review. The department determined the language was not necessary and removing the language is consistent with similar facilities.

As provided in 40 CFR 434.63, the facility may be allowed alternate limitations based on a 10-year, 24-hour precipitation event; however 40 CFR 434.63 does not specify the precipitation amount. The department intends to reduce the 10-year, 24-hour precipitation amount in the

proposed permit from 3.0 inches to 2.97 inches based on updated precipitation frequency estimates. In 2013, the U.S. Department of Commerce, National Oceanographic and Atmospheric Administration (NOAA) released *NOAA Atlas 14*, which updated the precipitation amount for the 10-year, 24-hour precipitation event. According to *Atlas 14*, the precipitation amount for the area covered by the facility 2.97 inches. Prior to the release of *Atlas 14*, the 10-year, 24-hour precipitation amount was 3.0 inches. This amount was based on the U.S. Department of Commerce, Weather Bureau Technical Paper 40, *Rainfall Frequency Atlas of the United States*, released in 1961.

The department determined the release of *NOAA Atlas 14* is a substantial change in selecting the 10-year, 24-hour precipitation amount. Sedimentation ponds constructed prior to the change were designed to meet a larger 3.0 inch overflow requirement. The department determined lowering the 10-year, 24-hour precipitation amount is an allowable exception to 40 CFR 122.44(l)(2) which allows a permit to be issued with less stringent effluent limitations when information is available that would justify less stringent effluent limitations.

The proposed effluent limitations shall take effect upon the effective date of the proposed permit. The effluent limitations and basis for the limitations are provided in Tables 2 and 3.

Table 2: Active Mining Areas

Effluent Parameter	Units	Monthly Average	Daily Maximum	Basis ^d
Total Iron ^a	mg/L	3.5	7.0	40 CFR 434.42; 40 CFR 434.63(a) & (e)
Total Suspended Solids ^a (TSS)	mg/L	35.0	70.0	40 CFR 434.42; 40 CFR 434.63(a) & (e)
Settleable Solids ^a	mL/L	N/A	0.5	40 CFR 434.63(a)
Oil & Grease ^b	mg/L	*	10	WQS, BPJ
pH ^c	S.U.	6.0 – 9.0		40 CFR 434.42; 40 CFR 434.63(a); WQS
The permittee shall not discharge any floating solids, visible foam in other than trace amounts, or oily wastes that produce sheen on the surface of the receiving water.				Previous Permit
Notes:				
<p>a. <u>Alternate Limitations:</u> The department may waive the limitations for total iron and total suspended solids for overflows caused by a single or series of precipitation or snowmelt events after reviewing all information submitted in response to the Noncompliance Notification conditions of the permit. During overflow discharges total suspended solids sampling shall be done in conjunction with settleable solids sampling for comparison purposes. Monitoring for settleable solids is not required for routine discharges.</p> <p>The settleable solids limit may be waived if there is a precipitation event greater than 2.97 inches in 24 hours. The limit may also be waived for snowmelt events on a case-by-case basis for facilities designed and maintained to contain runoff from a 10-year, 24-hour precipitation event.</p>				

Table 2: Active Mining Areas

	<p>To qualify for these limitations, the facility must be designed, constructed, operated, and maintained to treat the runoff from a 10-year, 24-hour precipitation event (2.97 inches). For sedimentation ponds, any required pond dewatering must have been accomplished within 10 days of the last precipitation event when practicable. Additional time is allowable when dewatering is delayed due to activities or conditions downstream of the facility such as agricultural activities, landowner accessibility, drainage channel stability or capacity. The permittee has the burden of proof that these conditions are met.</p> <p>Precipitation shall be measured by gauge and recorded daily by the permittee.</p>
b.	If a visible sheen or floating oil is observed in the effluent, a grab sample shall be analyzed to ensure compliance with the concentration limitation.
c.	pH shall remain within the range 6.0 to 9.0 S.U.
d.	<p>The basis of the effluent limitations is given below:</p> <p>“Previous Permit” refers to limitations in the previous permit. The NPDES regulations 40 CFR Part 122.44(1)(1) Reissued permits require that when a permit is renewed or reissued, interim limitations, standards or conditions must be at least as stringent as the final effluent limitations, standards, or conditions in the previous permit unless the circumstances on which the previous permit was issued have materially and substantially changed since the previous permit was issued and would constitute cause for permit modification or revocation and reissuance under 40 CFR Part 122.62.</p> <p>“BPJ” refers to best professional judgment.</p> <p>“WQS” refers to effluent limitations based on the State of North Dakota’s “Standards of Quality for Waters of the State,” NDAC Chapter 33.1-16-02.1.</p>
N/A	Not applicable
*	This parameter is not limited. However, the department may impose limitations based on sample history and to protect the receiving waters.

Table 3: Reclamation Areas

Effluent Parameter	Units	Daily Maximum	Basis ^d
Settleable Solids ^a	mL/L	0.5	40 CFR 434.52(a); 40 CFR 434.63(a) & (e)
Total Suspended Solids ^b (TSS)	mg/L	70	BPJ; Previous Permit

Table 3: Reclamation Areas

pH ^c	S.U.	6.0 – 9.0	40 CFR 434.52(a); 40 CFR 434.63(a) & (d); WQS
Notes:			
a.	<p>The settleable solids requirements apply to overflows or increases in flow caused by a single or series of precipitation or snowmelt events. The limitation may be waived if the amount of precipitation is greater than 2.97 inches in 24 hours. The limitation may also be waived for snowmelt events on a case-by-case basis for facilities designed and maintained to contain runoff from a 10-year, 24-hour precipitation event. The permittee has the burden of proof that these conditions are met.</p> <p>Precipitation shall be measured by gauge and recorded daily by the permittee.</p>		
b.	<p>The total suspended solids limitation shall apply only to controlled discharges made by mechanical or gravity dewatering devices. During an overflow, discharge sampling for total suspended solids shall be done in conjunction with settleable solids sampling for comparison purposes. Monitoring for settleable solids is not required for routine discharges.</p>		
c.	<p>pH shall remain within the range 6.0 to 9.0 S.U.</p>		
d.	<p>The basis of the effluent limitations is given below:</p> <p>“Previous Permit” refers to limitations in the previous permit. The NPDES regulations 40 CFR Part 122.44(1)(1) Reissued permits require that when a permit is renewed or reissued, interim limitations, standards or conditions must be at least as stringent as the final effluent limitations, standards, or conditions in the previous permit unless the circumstances on which the previous permit was issued have materially and substantially changed since the previous permit was issued and would constitute cause for permit modification or revocation and reissuance under 40 CFR Part 122.62.</p> <p>“BPJ” refers to best professional judgment.</p> <p>“WQS” refers to effluent limitations based on the State of North Dakota’s “Standards of Quality for Waters of the State,” NDAC Chapter 33.1-16-02.1.</p>		

SELF-MONITORING REQUIREMENTS

Samples obtained from active mining and reclamation areas must be taken prior to the discharge water leaving company property or entering any receiving stream.

Nutrient monitoring is being added to the proposed permit to coincide with the development of the state’s nutrient reduction strategy.

Table 4: Self-Monitoring Requirements: *Active Mining Areas*

Effluent Parameter	Frequency	Sample Type ^a
Total Iron	Monthly	Grab
TSS	Weekly	Grab
Settleable Solids	Weekly	Grab
Oil & Grease – Visual	Daily	Visual
Oil & Grease	Conditional/Monthly	Grab
pH	Monthly	Instantaneous
Flow Rate ^b	Daily	Calculated
Drain, Total ^b	Monthly	Calculated
Total Days Discharging	Monthly	Calculated
Nitrogen, Total ^c	Monthly	Grab/Calculated
Phosphorus, Total	Monthly	Grab/Calculated
Notes:		
a. Refer to Appendix B for definitions.		
b. The daily flow rate shall be determined by instantaneous flow measurement or calculated from daily readings.		
c. Total nitrogen is a combination of nitrate, nitrite, and Total Kjeldahl Nitrogen (TKN).		

Table 5: Self-Monitoring Requirements: *Reclamation Areas*

Effluent Parameter	Frequency	Sample Type ^a
TSS	Quarterly	Grab
Settleable Solids	Quarterly	Grab
pH	Monthly	Instantaneous
Flow Rate ^b	Daily	Calculated
Drain, Total ^b	Monthly	Calculated
Total Days Discharging	Monthly	Calculated
Nitrogen, Total ^c	Monthly	Grab/Calculated
Phosphorus, Total	Monthly	Grab/Calculated
Notes:		
a. Refer to Appendix B for definitions.		
b. The daily flow rate shall be determined by instantaneous flow measurement or calculated from daily readings.		
c. Total nitrogen is a combination of nitrate, nitrite, and Total Kjeldahl Nitrogen (TKN).		

SURFACE WATER QUALITY-BASED EFFLUENT LIMITS

The North Dakota Standards of Quality for Waters of the State (NDAC Chapter 33.1-16-02.1), or Water Quality Standards (WQS), are designed to protect existing water quality and preserve the beneficial uses of North Dakota's surface waters. Wastewater discharge permits must include conditions that ensure the discharge will meet the surface water quality standards. Water

quality-based effluent limits may be based on an individual waste load allocation or on a waste load allocation developed during a basin wide total maximum daily load (TMDL) study. TMDLs result from a scientific study of the water body and are developed in order to reduce pollution from all sources.

The unnamed tributaries of Buffalo Creek are not classified in the WQS. Streams that are not specifically mentioned in the WQS are classified as class III streams (NDAC Section 33.1-16-02.1, Appendix I). Class III streams must be suitable for agricultural and industrial uses. These streams generally have low average flows with prolonged periods of no flow. During periods of no flow, they are of limited value for recreation and fish and aquatic biota. The quality of water in class III streams must be suitable for secondary contact recreation uses (e.g., wading) as well as fish and aquatic biota and wildlife uses.

The unnamed tributaries of Buffalo Creek are not listed as impaired in the 2018 North Dakota Section 303(d) List of Waters Needing Total Maximum Daily Loads (303(d) List). There currently are no TMDLs associated with the tributaries.

Numerical Criteria for the Protection of Aquatic Life and Recreation

Numerical water quality criteria are listed in the water quality standards for surface waters (NDAC Section 33.1-16-02.1). They specify the maximum levels of pollutants allowed in receiving water to protect aquatic life and recreation in and on the water. The department uses numerical criteria along with chemical and physical data for the wastewater and receiving water to derive the effluent limits in the discharge permit. When surface water quality-based limits are more stringent or potentially more stringent than technology-based limits, the discharge must meet the water quality-based limits.

Numerical Criteria for the Protection of Human Health

The U.S. EPA has published numeric water quality criteria for the protection of human health that are applicable to dischargers. These criteria are designed to protect humans from exposure to pollutants linked to cancer and other diseases, based on consuming fish and shellfish and drinking contaminated surface waters. The Water Quality Standards also include radionuclide criteria to protect humans from the effects of radioactive substances.

Narrative Criteria

Narrative water quality criteria (NDAC Section 33.1-16-02.1-08) limit concentrations of pollutants from exceeding applicable standards of the receiving waters. The department adopted a narrative biological goal solely to provide an additional assessment method that can be used to identify impaired surface waters.

Antidegradation

The purpose of North Dakota's Antidegradation Policy (NDAC Section 33.1-16-02 (Appendix IV)) is to:

- Provide all waters of the state one of three levels of antidegradation protection.

- Determine whether authorizing the proposed regulated activity is consistent with antidegradation requirements.

The department's fact sheet demonstrates that the existing and designated uses of the receiving water will be protected under the conditions of the proposed permit.

Mixing Zones

The department's WQS contain a Mixing Zone and Dilution Policy and Implementation Procedure, NDAC Section 33.1-16-02.1 (Appendix III). This policy addresses how mixing and dilution of point source discharges with receiving waters will be addressed in developing chemical-specific and whole effluent toxicity discharge limitations for point source discharges. Depending upon site-specific mixing patterns and environmental concerns, some pollutants/criteria may be allowed a mixing zone or dilution while others may not. In all cases, mixing zone and dilution allowances shall be limited, as necessary, to protect the integrity of the receiving water's ecosystem and designated uses.

EVALUATION OF SURFACE WATER QUALITY-BASED EFFLUENT LIMITS FOR NUMERIC CRITERIA

Oil & Grease

The WQS state that waters of the state must be free from oil or grease attributable to wastewater which causes a visible sheen or film upon the water. Using BPJ the department has determined that a daily maximum limitation of 10 mg/L is appropriate for active mining areas if a visible sheen is detected. Other treatment systems in the state have similar limitations.

pH

The WQS state that discharges to unclassified streams shall be between 6.0 (s.u.) and 9.0 (s.u.).

Human Health

North Dakota's water quality standards include numeric human health-based criteria that the department must consider when writing NDPDES permits. These criteria were established in 1992 by the U.S. EPA in its National Toxics Rule (40 CFR 131.36). The National Toxics Rule allows states to use mixing zones to evaluate whether discharges comply with human health criteria. The department determined the applicant's discharge is unlikely to contain chemicals regulated to protect human health. The department will re-evaluate this discharge for impacts to human health at the next permit reissuance.

MONITORING REQUIREMENTS

The department requires monitoring, recording, and reporting (NDAC Section 33.1-16-01-(21 through 23) and 40 CFR 122.41) to verify that the treatment process is functioning correctly and that the discharge complies with the permit's limits.

Test Procedures

The collection and transportation of all samples shall conform to EPA preservation techniques and holding times found in 40 CFR 136. All laboratory tests shall be performed by a North Dakota certified laboratory in conformance with test procedures pursuant to 40 CFR 136, unless other test procedures have been specified or approved by EPA as an alternate test procedure under 40 CFR 136.5. The method of determining the total amount of water discharged shall provide results within 10 percent of the actual amount. The Settleable Solids test procedure shall conform with 40 CFR 434.64.

OTHER PERMIT CONDITIONS

Dust Suppression

The mine utilizes water pumped into water spraying equipment from ponds for dust suppression. The proposed permit contains language to apply dust suppression water at a rate that does not produce runoff.

PERMIT ISSUANCE PROCEDURES

Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. This includes the establishment of limitations or prohibitions based on changes to Water Quality Standards, the development and approval of waste load allocation plans, the development or revision to water quality management plans, changes in sewage sludge practices, or the establishment of prohibitions or more stringent limitations for toxic or conventional pollutants and/or sewage sludges. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Proposed Permit Issuance

This proposed permit meets all statutory requirements for the department to authorize a wastewater discharge. The permit includes limits and conditions to protect human health and aquatic life, and the beneficial uses of waters of the State of North Dakota. The department proposes to issue this permit for a term of five (5) years.

APPENDIX A – PUBLIC INVOLVEMENT INFORMATION

The department proposes to reissue a permit to **American Colloid Company** for its commercial leonardite mining operation. The permit includes wastewater discharge limits and other conditions. This fact sheet describes the facility and the department's reasons for requiring permit conditions.

The department will place a Public Notice of Draft on **May 6, 2022** in the **Bowman County Pioneer** to inform the public and to invite comment on the proposed draft North Dakota Pollutant Discharge Elimination System permit and fact sheet.

The Notice –

- Indicates where copies of the draft Permit and Fact Sheet are available for public evaluation.
- Offers to provide assistance to accommodate special needs.
- Urges individuals to submit their comments before the end of the comment period.
- Informs the public that if there is significant interest, a public hearing will be scheduled.

You may obtain further information from the department by telephone, 701.328.5210, or by writing to the address listed below.

North Dakota Department of Environmental Quality
Division of Water Quality
4201 Normandy Street
Bismarck, ND 58503

The primary author of this permit and fact sheet is Dallas Grossman.

**North Dakota Department of Environmental Quality Public Notice
Reissue of an NDPDES Permit**

Public Notice Date: 5/6/2022

Public Notice Number: ND-2022-004

Purpose of Public Notice

The Department intends to reissue the following North Dakota Pollutant Discharge Elimination System (NDPDES) Discharge Permit under the authority of Section 61-28-04 of the North Dakota Century Code.

Permit Information

Application Date: 3/14/2022

Application Number: ND0026077

Applicant Name: American Colloid Co Gascoyne

Mailing Address: PO Box 2010, Bell Fourche, SD 57717

Telephone Number: 605.892.7178

Proposed Permit Expiration Date: 6/30/2027

Facility Description

The reapplication is for a commercial leonardite surface mining operation located near Scranton, ND. Discharges consist of surface runoff and/or groundwater encountered during mining. Discharges are within a closed basin and to unnamed tributaries of Buffalo Creek, a Class III stream. Discharges covered by this permit are subject to the surface water management conditions and the designated locations described in surface mining permits approved following public review under NDCC Chapter 38-14.1. Current and proposed discharge structures are located within the boundaries of American Colloid Company's approved surface mining permit in Sections 2 and 12, Township 130 North, Range 99 West and Section 35, Township 131 North, Range 99 West.

Tentative Determinations

Proposed effluent limitations and other permit conditions have been made by the Department. They assure that State Water Quality Standards and applicable provisions of the FWPCA will be protected.

Information Requests and Public Comments

Copies of the application, draft permit, and related documents are available for review. For further information on making public comments/public comment tips please visit: <https://deq.nd.gov/PublicCommentTips.aspx>. Comments or requests should be directed to the ND Dept of Env Quality, Div of Water Quality, 4201 Normandy Street, Bismarck ND 58503-1324 or by calling 701.328.5210.

All comments received by June 04, 2022 will be considered prior to finalizing the permit. If there is significant interest, a public hearing will be scheduled. Otherwise, the Department will issue the final permit within sixty (60) days of this notice. If you require special facilities or assistance relating to a disability, call TDD at 1.800.366.6868.

APPENDIX B – DEFINITIONS

DEFINITIONS Standard Permit BP 2019.05.29

1. “**Act**” means the Clean Water Act.
2. “**Average monthly discharge limitation**” means the highest allowable average of “daily discharges” over a calendar month, calculated as the sum of all “daily discharges” measured during a calendar month divided by the number of “daily discharges” measured during that month.
3. “**Average weekly discharge limitation**” means the highest allowable average of “daily discharges” over a calendar week, calculated as the sum of all “daily discharges” measured during a calendar week divided by the number of “daily discharges” measured during that week.
4. “**Best management practices**” (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage areas.
5. “**Bypass**” means the intentional diversion of waste streams from any portion of a treatment facility.
6. “**Composite**” sample means a combination of at least 4 discrete sample aliquots, collected over periodic intervals from the same location, during the operating hours of a facility not to exceed a 24-hour period. The sample aliquots must be collected and stored in accordance with procedures prescribed in the most recent edition of Standard Methods for the Examination of Water and Wastewater.
7. “**Daily discharge**” means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the “daily discharge” is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the “daily discharge” is calculated as the average measurement of the pollutant over the day.
8. “**Department**” means the North Dakota Department of Environmental Quality, Division of Water Quality.
9. “**DMR**” means discharge monitoring report.
10. “**EPA**” means the United States Environmental Protection Agency.
11. “**Geometric mean**” means the n^{th} root of a product of n factors, or the antilogarithm of the arithmetic mean of the logarithms of the individual sample values.

12. **“Grab”** for monitoring requirements, means a single "dip and take" sample collected at a representative point in the discharge stream.
13. **“Instantaneous”** for monitoring requirements, means a single reading, observation, or measurement. If more than one sample is taken during any calendar day, each result obtained shall be considered.
14. **“Maximum daily discharge limitation”** means the highest allowable “daily discharge.”
15. **“Salmonid”** means of, belonging to, or characteristic of the family Salmonidae, which includes the salmon, trout, and whitefish.
16. **“Sanitary Sewer Overflows (SSO)”** means untreated or partially treated sewage overflows from a sanitary sewer collection system.
17. **“Severe property damage”** means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
18. **“Total drain”** means the total volume of effluent discharged.
19. **“Upset”** means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

DEFINITIONS Permit Specific

1. **“Active Mining Area”** means the area on and beneath land, used or disturbed in activity related to extraction, removal, or recovery of coal from its natural deposits. The definition may include access roads, suitable plant growth material (SPGM), stockpiles, sedimentation ponds, and other related structures.
2. **“Daily maximum concentration”** means the greatest discharge concentration during any calendar day. If more than one sample is taken on a calendar day, the average of all such samples shall be the daily concentration for that day.
3. **“Monthly Average Concentration”** means the average discharge concentration during a 30-consecutive day period (for reporting purposes a calendar month). It shall be determined by the summation of all daily concentrations for 30 days (calendar month) divided by the total number of days on which the values were obtained. If more than one sample is taken on a calendar day, the average of all such samples shall be the daily concentration for that day.
4. **“NDPDES”** means North Dakota Pollutant Discharge Elimination System.

5. **“Reclamation Area”** means an area which has been isolated from active mining area drainage and on which the final reclamation contour has been reached and seeding is completed. The definition may include access roads, suitable plant growth material (SPGM), stockpiles, sedimentation ponds, and other related structures.

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APPENDIX C – DATA AND TECHNICAL CALCULATIONS

The development of the permit did not require technical calculations by the North Dakota Department of Environmental Quality. The department reviewed DMR information and applicable water quality standards for class III streams to determine the appropriate requirements to be placed in the permit. In addition, the department reviewed Total Maximum Daily Load information for the Buffalo Creek watershed and the department's 2018 North Dakota Section 303(d) List of Waters Needing Total Maximum Daily Loads (303(d) List).

APPENDIX D – RESPONSE TO COMMENTS

Comments received during the public comment period will be placed here.

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